



1926

Proceedings of the Bar Association of North Dakota, Had at Its Annual Meeting, Held at Bismarck, North Dakota, September 9th and 10th, 1926

North Dakota State Bar Association

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PROCEEDINGS OF THE BAR ASSOCIATION OF NORTH
DAKOTA, HAD AT ITS ANNUAL MEETING,
HELD AT BISMARCK, NORTH DAKOTA,
SEPTEMBER 9th and 10th, 1926.

September 9, 1926, Morning Session, 9:00 A. M.
President C. L. Young, of Bismarck, Presiding.

PRESIDENT YOUNG: We will open our annual meeting with an invocation by the Reverend Mr. Paul S. Wright, pastor of the First Presbyterian church of this city.

REVEREND MR. WRIGHT: Let us bow our heads, please, in words of prayer. Our Heavenly Father, we acknowledge Thee to be the Lord and Sovereign of this universe. By the infinite power which is Thine, by Thy mind and heart, Thou hast brought into being this world, Thou hast forever been its Governor. Through these many centuries in which its story has unfolded, Thou hast been interested in the welfare of Thy children. It is Thou who first devised Law and Order. It has been Thy choice that chaos should not reign, but there should be government. Thou has set codes for mankind; Thou hast devised moral laws. Thou has devised a ministry which is a perfect symbol by which Thy work may be carried out. It is therefore fitting that we lawyers here should recognize that at the beginning of this convention we should pray that Thy blessing should rest upon us. We recognize the heritage that is ours this morning. We are following in the foot-steps of those who in ages past have been making laws and interpreting them. We are following in the foot-steps of our sires who founded this country. We recognize our duty to carry on the work, to defend it and to enforce the laws, and we ask that Thou strengthen us for the task. We recognize that we have difficulties to overcome and we recognize that troubles have been upon us and we have not fulfilled our duty faithfully. We ask Thy forgiveness when we have fallen from the high office that is ours and for the sake of self-aggrandizement have forsaken the true and joined with the evil to advance our own interests. We pray Thy forgiveness for such misdeeds. May we love the truth for its own sake, whether it means loss or gain for us, to stand by it to the end. We ask Thy blessing as we meet to discuss the problems of our state and nation. We ask that out of this convention may come great good, and that this nation under God may see such a phase of law-abidance that there may come those things that are perfectly moral. These things we ask in the name of Jesus Christ, our Lord and Saviour, amen.

PRESIDENT YOUNG: Will some one kindly advise those assembled in the lobby that the meeting is under way and their talking there is disturbing the assembly here. We will have the address of welcome of L. J. Wehe, president of the Burleigh County Bar Association.

ADDRESS OF WELCOME

MR. WEHE: Mr. President, members of the State Bar Association, ladies and gentlemen: It pleases us very much at this time and so early in the morning to see so many of you turn out, and it looks to me that we are going to have one of the most successful bar association meetings that we have ever had, from the registration at this time, being informed by our secretary, Mr. Wenzel.

In the capacity of a speaker welcoming you, and in behalf of the Burleigh County Bar Association, it is always permissible, it seems, in an address of this kind to advertise your town. Sometimes you help to put it on the map. It is eight years ago since you had your last meeting here. I wasn't here that year. I came here one year later. Since that time, you will notice that our town has grown very rapidly. It has emerged from a town, or country quasi-city, to a city and it is still rapidly growing. We had a population of six thousand six years ago. At the present time we have over ten thousand people in our city. We have more miles of paved streets per population than any city in the northwest. That is why Bismarck looks beautiful, with its shady trees and the large buildings that have come up. The town has taken on the appearance of, in fact it has become since then, a business and commercial center for all the southwest portion of the state, and it is bound to be a commercial and jobbing center. We have in our midst one of the latest and most up-to-date water filters anywhere to be found in the northwest from which we serve clear sparkling water, and we ask you to partake to your heart's content. If you want something more satisfying than Bismarck has to offer, we have a broad Missouri river, at the end of which Mandan lies, and where they claim the west begins. Bismarck has more politics than any town in the state as it is the capital of our state. We are charged in an atmosphere of politics the year around. We have all kinds of politics to suit all kinds of tastes and if anyone wants to locate here, we can give them what they want because they can suit themselves.

Well, we do not invite, or urge, or insist that anyone attending move to Bismarck, because we do not believe in a division of profits nor do we believe in communism. We like to keep the legal end of it ourselves. I do not want to scare you out, but we

have more attorneys in Bismarck than any other city in the state. Now, some city might contest that, such as Fargo, but when you take into consideration that there are three or four in the Bank of North Dakota, three or four in the tax commissioner's office, and in the various state departments, you will see that we have loads of attorneys. The political wheel each year, as it turns around, brings more attorneys to Bismarck, and it leaves some of them here. That is how some of us arrived in Bismarck, on the turn of the political wheel. We do not want to discourage you but we want you to know that we have all these things.

Now, as a diversion from the serious program, we have provided some diversions. We have a beautiful country club on the hill. You will see from there one of the most panoramic views that we have in our city. Any of you who have never seen that hill should go up and see what a good perspective you can get of the thirty miles around, with the stream of the Missouri winding off on its crooked path like a snake. It impresses me every time I go up there. We hope that everyone of you will go up there and take your ladies with you. If any of you play golf, we have Mr. Cox up there who will take care of you. If any of you are tennis players, he will take you on and accommodate you in that line. This afternoon, our ladies have provided an informal get-together in the Town and Country club, to start at 4 until 7, at which music and dancing, if you wish will be provided. This is open to you all and free and we hope you will bring your wife and friends. Automobiles will be provided to take you up there. Tomorrow afternoon our ladies will have an informal tea for your ladies. Also a luncheon at the country club at 12 noon, and automobiles will be provided. When you are up there, make it a business and an object to survey the view that you can see from that height.

Tomorrow afternoon at 4:30, we have provided automobiles for a trip to take you from the Grand Pacific hotel to the Great Plains Experiment Station, and from up there to Old Fort Lincoln, not the new Fort Lincoln, which is on our side of the river, but the Old Fort Lincoln, which is the historic fort and is on the other side of the river and belongs to Mandan. This is where Custer died and it is connected with one of the saddest historic events that has happened in this neighborhood. This will be in charge of Mr. Crawford, the state historian, who will explain to you anything that you want to know of historic interest. Transportation will be provided for that trip at the Grand Pacific hotel.

Now, there is one other place that we have out here on the edge of town, east of town, that we do not advertise very much and we haven't made it a point to advertise it to you lawyers.

We do not think it would be advisable to take you out to the penitentiary to see its buildings and also its inmates. We thought we would not embarrass any of the lawyers by taking them on a trip out there as it might recall some of your past mistakes and you might not like to be confronted with them, so as our guests we will not take you. But should any of you wish to see in secret the victims of your past errors, I am sure that Warden Lee will accommodate you in private.

We hope your stay with us in attending this convention will be a joy and a delight. Our hearts are open to you as well as our city in extending to you this welcome of the Burleigh County Bar Association. (Applause.)

PRESIDENT YOUNG: Mr. W. A. McIntyre, vice-president of the State Bar Association, will respond to this address.

RESPONSE

MR. MCINTYRE: Mr. President and Mr. Wehe, members of the bar: I would like to say as King Agrippa said to Paul, who came before him in centuries past, "Almost thou persuadest me"—to become a resident of Bismarck.

I am glad you omitted the penitentiary for I am afraid some of us would have the feeling there of a southern brother at a tent meeting. One of the sisters on the platform noticed the brother was somewhat moved and asked an assistant to go down and try to persuade him to come forward. "Brother," she told him, "the time of repentance is at hand." "Yes, I know, I want to come up." "Come up to the rail and confess your sins." "Yes, I'll do that." Still he hesitated. "Come along and confess your sins. The Lord will forgive you." "Yes, I suppose he would, but the grand jury—I'm not sure about them." Warden Lee might be like that. The doors might not open for the session again.

Mr. Wehe, we would indeed be cold and unappreciative if we did not feel the welcome of your city. None of us, I think, are strangers to the hospitality of Bismarck. Some of us who were here in days gone by wonder what has happened to those other days when it was not the water that sparkled. The wonderful system of water works now creates the sparkle. There used to be a Northwest Hotel corner where some will remember the sparkle and the welcome. So that we have been accustomed for years to the hospitality of Bismarck, and the fact that so many have come also shows that we believe that we are out here where the west does begin, where the hand-clasp is warm, as the poet says, where there is more of giving and less of spending—Bismarck is the center of hospitality.

PRESIDENT YOUNG: We will now have the report of the secretary-treasurer.

REPORT OF THE SECRETARY-TREASURER

Following the 1925 session of this association the new executive committee met and directed the secretary to edit and publish the proceedings of the annual meeting, also to continue the publication of Bar Briefs. Both of these directions were followed out, not, however, without the able and continuous supervision and assistance of President Young, who gave unstintingly of his time.

Bar Briefs, it is believed, is meeting a real need; although, as yet, it is not meeting it as fully as those in charge of its publication would like. It is still more or less of an experimental activity, and very much in its infancy. Yet, notwithstanding its admitted probationary character, it has created and is maintaining interest. As evidence of that it need only be said that two of the issues have been completely exhausted by reason of requests for additional copies.

The executive committee also delegated to the secretary the preparation of an amendment to the constitution and by-laws to cover the manner of selecting names for recommendation to the supreme court for membership on the bar board. Feeling that the regular committee on constitution and by-laws should have the final say in the matter, however, the secretary made his recommendations to that committee instead of presenting them directly to the 1926 annual meeting.

Continued interest was manifested by various state bar associations in our bar incorporation law during the year, requests for information coming from nine different associations. In most cases these requests were for complete copies of our law, together with copies of our constitution and by-laws. There were also numerous other requests for information, from individual attorneys and from laymen, one, from Kansas, expressing the modest desire that he be supplied with the divorce laws of North Dakota "and a digest of all supreme court decisions relating thereto."

Complaints against North Dakota attorneys were fewer than ever this year. These were all referred to the committee on internal affairs, as a matter of course, and the fact that none of these matters came back to the secretary's office a second time speaks eloquently of two things: first, that the complaints related to minor matters, and secondly, that the internal affairs committee did its work efficiently and speedily.

FINANCIAL STATEMENT

Receipts

Balance on hand last annual report	\$1,463.51
Nov., 1925, interest on C. D.	16.87
Nov., 1925, received from bar board (1925)	125.00
Feb., 1926, received from bar board (1925 balance)	55.00
Feb., 1926, received from bar board (402 for 1926)	2,010.00
Apr., 1926, received from bar board, (83 for 1926)	415.00
May, 1926, received from attorneys for re-statements....	28.00
Aug., 1926, received from bar board (55 for 1926)	275.00
Aug., 1926, interest on C. D.	20.00
Total	\$4,408.38

Expenditures

Sept. 14, 1925, A. A. Loye, law enforcement committee	\$ 23.00
Sept. 14, 1925, T. F. Murtha, executive committee	51.06
Sept. 14, 1925, R. E. Wenzel, executive committee and misc.	47.12
Sept. 16, 1925, Humphreys & Moule, envelopes for Bar Briefs	11.00
Sept. 16, 1925, Western Badge Co., badges, annual meeting	17.37
Sept. 16, 1925, Oliver Lundquist, stamps	4.00
Sept. 24, 1925, A. E. Wheeler, executive committee.....	41.42
Sept. 24, 1925, Gardner Hotel, expenses, Governor Sorlie, Judge Stone, Governor Nolan and Judge Christianson	45.70
Sept. 24, 1925, Hannaher-Anderson, Co., printing programs	32.50
Sept. 24, 1925, W. F. Burnett, annual meeting expense advanced	99.90
Sept. 30, 1925, A. M. Christianson, expense annual meeting	16.00
Sept. 30, 1925, Bismarck Tribune, Sept. Bar Briefs	24.00
Sept. 30, 1925, R. E. Wenzel, September	41.18
Sept. 30, 1925, Oliver Lundquist, envelopes for president	10.96
Oct. 15, 1925, Oliver Lundquist, deposit for Bar Briefs..	1.00
Nov. 4, 1925, R. E. Wenzel, October	40.00
Nov. 7, 1925, Horace Bagley, executive committee	28.54
Nov. 7, 1925, John Knauf, executive committee	8.00
Nov. 7, 1925, W. H. Hutchinson, executive committee....	7.20
Nov. 7, 1925, W. A. McIntyre, executive committee.....	29.25

Nov. 7, 1925, V. R. Lovell, executive committee	21.29
Nov. 7, 1925, H. D. Shaft, reporting proceedings	112.35
Nov. 7, 1925, Humphreys & Moule, letter heads	13.50
Nov. 7, 1925, W. F. Burnett, annual meeting expenses advanced	4.60
Nov. 25, 1925, Bismarck Tribune, October and Novem- ber Bar Briefs	48.00
Dec. 2, 1925, R. E. Wenzel, November and postage	41.30
Dec. 9, 1925, National Security League, for citizenship Com.	15.00
Dec. 15, 1925, Oliver Lundquist, postage	4.00
Dec. 30, 1925, R. E. Wenzel, December	40.00
Jan. 8, 1926, A. W. Cúpler, president, expense 1925	18.00
Jan. 8, 1926, Bismarck Tribune, December Briefs	24.00
Jan. 19, 1926, Oliver Lundquist, stamps for proceedings..	46.83
Jan. 23, 1926, R. E. Wenzel, January	40.85
Feb. 5, 1926, Bismarck Tribune, January Briefs	24.00
Feb. 5, 1926, Humphreys & Moule, citizenship committee printing	90.63
Feb. 5, 1926, Humphreys & Moule, Bar Briefs envelopes..	14.00
Feb. 6, 1926, Oliver Lundquist, postage	4.00
Feb. 10, 1926, Bismarck Tribune, envelopes for proceed- ings	17.00
Feb. 10, 1926, Quick Print, 1925 proceedings	430.60
Feb. 10, 1926, Knauf & Knauf, balance 1925, citizenship Com.	153.93
Feb. 10, 1926, First Guaranty Bank, deposit time certi- ficate	1,000.00
March 3, 1926, State Bonding Department, bond of secretary	5.00
March 3, 1926, Oliver Lundquist, advance postage, Bar Briefs	2.00
March 3, 1926, R. E. Wenzel, February	40.00
March 5, 1926, Bismarck Tribune, February Briefs.....	24.00
March 18, 1926, Catherine E. Morris, president's stenog- rapher	60.00
March 18, 1926, Conmy, Young & Burnett, balance 1925 meeting	121.58
March 20, 1926, Oliver Lundquist, box rent	1.50
March 31, 1926, Oliver Lundquist, stamps	5.00
March 31, 1926, R. E. Wenzel, March	40.00
March 31, 1926, Bismarck Tribune, March Bar Briefs....	30.00
April 6, 1926, Oliver Lundquist, envelopes for president..	5.48
April 14, 1926, C. L. Young, for re-statements of the law	73.00
April 21, 1926, Bismarck Tribune, envelopes for Bar Briefs	25.00

April 30, 1926, R. E. Wenzel, April	40.00
May 7, 1926, Bismarck Tribune, April Bar Briefs	24.00
May 13, 1926, Oliver Lundquist, postage on re-state- ments	1.00
June 1, 1926, R. E. Wenzel, May	40.00
June 9, 1926, C. L. Young, expense for president	7.76
June 9, 1926, C. L. Young, expense for president	7.25
June 23, 1926, Oliver Lundquist, 550 double postcards, annual meeting	11.00
June 28, 1926, Clarence G. Mead, citizenship committee..	54.90
June 28, 1926, Oliver Lundquist, box rent and Bar Briefs	3.50
June 28, 1926, R. E. Wenzel, June	40.00
July 27, 1926, R. E. Wenzel, July	40.00
Aug. 3, 1926, Bismarck Tribune, July Bar Briefs	25.50
Aug. 26, 1926, Oliver Lundquist, 400 postcards and 100 envelopes	6.27
Aug. 30, 1926, C. L. Young, telephone tolls	2.75
Aug. 30, 1926, Catherine E. Morris, president's stenog- rapher	80.00
Aug. 30, 1926, Bismarck Tribune, August Briefs	30.00
Aug. 30, 1926, R. E. Wenzel, August and misc.	41.20
Aug. 30, 1926, Humphreys & Moule, printing two sets cards	5.75
Aug. 30, 1926, Alice Angus, stenographic work	3.25
Total	\$3,639.77
Less C. D. redeposit	1,000.00
Total net expense	\$2,639.77
Balance, Sept. 1st	\$1,768.61

BUDGET AND EXPENDITURES

	Budget	Expended
Printing 1925 Proceedings	\$ 450.00	\$ 447.61
Printing and postage	150.00	137.86
Executive Committee	300.00	103.78
Executive Committee (balance 1925)		139.60
Citizenship Committee	350.00	160.53
Citizenship Committee (balance 1925)		153.93
Probate Code Committee	50.00	
President	200.00	156.44
Secretary-Treasurer	480.00	480.00
Bar Briefs	325.00	252.00
1926 meeting	600.00	44.03
Legislative Committee		

Law Institute	50.00	* 73.00
1925 meeting		450.00
Law Enforcement Committee (1925).....		23.00
President (balance 1925)		18.00
	<u>\$2,955.00</u>	<u>\$2,639.77</u>
Balance 1925		1,232.14
Net on 1926 budget		\$1,407.63
* Of this amount \$28.00 was returned by checks from individual attorneys.		
Balance at last annual meeting		\$1,463.51
1925 expenditures, balance		<u>1,232.14</u>
Net surplus 1925		\$ 231.37

September 1st, 1926.

This is to certify that there is on deposit to the credit of the State Bar Association of North Dakota on the 1st day of September, 1926, the sum of \$2,014.81 and no more.

First Guaranty Bank.

By F. A. LAHR, Pres.

Checks Outstanding

February 10, 1926, Knauf *	\$ 153.93
August 26, 1926, Lundquist	6.27
August 30, 1926, C. L. Young	2.75
August 30, 1926, Catherine Morris	80.00
August 30, 1926, Alice Angus	<u>3.25</u>
	\$ 246.20
Plus balance as per books	<u>1,768.61</u>
	<u>\$2,014.81</u>

R. E. W., 9-1-26

September 1, 1926.

This is to certify that between the 10th day of September, 1925, and the 1st day of September, 1926, there was turned over to the State Bar Association of North Dakota by the State Bar Board the sum of \$2,880.00, and no more.

J. H. NEWTON,

Secretary State Bar Board.

Audited this 8th day of September, 1926, and found to be correct.

T. F. MURTHA,
HORACE BAGLEY,
V. R. LOVELL,

Auditing Committee.

PRESIDENT YOUNG: What shall we do with the report?

MR. NOSTDAL: I move that it be accepted and placed on file.
Seconded.

PRESIDENT YOUNG: Any remarks?

PRESIDENT YOUNG: All in favor say "Aye."

The motion carried unanimously.

PRESIDENT YOUNG: We will now have the report of the executive committee.

REPORT OF EXECUTIVE COMMITTEE

The executive committee held two formal meetings during the year, both at the call of the president.

The first meeting was held on the 6th of October, 1925, at Bismarck, and was attended by the following: President Young, Vice-President McIntyre, and Messrs. Lovell, Bagley, Hutchinson and Knauf, and the secretary.

The work of editing and printing the record of the annual meeting was, on motion of Vice-President McIntyre, seconded by Mr. Lovell, and unanimously carried, delegated to the president and secretary.

Bids for printing the proceedings were opened at this session, and were as follows:

Quick Print, Bismarck	\$ 1.85 per page	\$5.00 for inserts
Hansen Bros., Jamestown....	3.42	1.50
Pierce Printing Co., Fargo	450.00	14.00 and 8.00
Globe-Gazette, Wahpeton....	2.70	3.75
Normanden, Grand Forks....	2.35	2.85
Knight Printing Co., Fargo..	2.40	2.40
Devils Lake Journal, Dev. L.	2.15	2.00
Tribune, Bismarck	2.15	6.00
Humphreys & Moule, Bis.....	2.25	2.25
Page Printerie, Grand Forks	3.84	8.00
Hannaher-Anderson, Fargo	4.00	6.25
Hopton-Siljan, Bismarck	3.00	3.50

On motion of Mr. Lovell, seconded by Mr. Hutchinson, and carried, the secretary was instructed to make contract with the Quick Print of Bismarck.

Considerable routine work came up in connection with the publication of the proceedings and of Bar Briefs, which was disposed of at this session.

On motion made and carried, Bismarck was selected as the place of holding the 1926 meeting, arrangements for which were placed in the hands of the president and such committee as he might deem necessary.

The following budget was proposed and adopted, after amendment:

Printing Proceedings	\$ 450.00
Printing and postage	150.00
Executive Committee	300.00
Citizenship Committee	350.00
Probate Code Committee	50.00
President	200.00
Secretary-Treasurer	480.00
Bar Briefs	325.00
1926 meeting	600.00
American Law Institute	50.00
Total.....	\$2,955.00

The president's committee assignments were considered and approved.

Moved by Mr. Wenzel, seconded by Mr. McIntyre, and carried, that the proposed Code of Judicial Ethics be submitted to the new Committee on Bench and Bar Ethics; that at least thirty days prior to the 1926 annual meeting such committee supply the judges of the supreme and district courts with copies of the code, with such changes or amendments as the committee may deem proper; and that the said judges be requested to consider and pass upon such proposed code prior to or at the time of the annual meeting.

The secretary was instructed to prepare and present a method of procedure for designation of recommendations for appointment to the bar board. This has since been done and submitted to the committee on constitution and by-laws.

The second meeting of the executive committee was called by President Young for the 8th day of September, 1826. There were present: President Young, Vice-President McIntyre, and Messrs. Murtha, Lovell, Bagley, Knauf, Hutchinson and Wenzel.

Messrs. Murtha, Lovell and Bagley were appointed a special committee to audit the books and accounts of the secretary-treasurer. Upon completion of the audit, it was moved, seconded and

carried that the report of the secretary-treasurer be approved as filed.

On motion of Mr. McIntyre, seconded by Mr. Lovell, and carried unanimously, the following recommendation was made to the annual meeting: That the legislative committee be instructed to amend the bar incorporation act to the effect that all unexpended balances annually remaining in the hands of the bar board be turned over to the State Bar Association.

The special resolution presented by the American Legion was considered and referred to the annual meeting for action.

Several bills, for which no provision had been made in the budget, were considered and passed by the executive committee as necessary expenditures.

The program for the annual meeting was approved and other routine business dealing with Bar Briefs, complaints, etc., considered and referred to the proper incoming committees.

SECRETARY: I move that this report be accepted and filed.

The motion was duly seconded and carried unanimously.

PRESIDENT YOUNG: Mr. Porter, who was to present the report of the committee on citizenship, will not be present until tomorrow, and we shall pass that report and shall receive the report of the committee on judicial ethics. I wish to explain that we are having the report read at this time so that the members will know what its character is, and at the regular time tomorrow it will be considered by this association. Mr. Lovell will present the report.

REPORT OF THE COMMITTEE ON JUDICIAL ETHICS

MR. LOVELL: The committee on the canons of judicial ethics have adopted those canons which have been submitted to and adopted by the American Bar Association at Philadelphia a year ago. They were carefully considered by the committee appointed for that purpose, including Mr. Taft, chief justice of the United States. The canons were also carefully gone over by the present committee which included Judge Jansonius and Justice John Burke. They consist of the canons adopted by the American Bar Association and have been considered by the association for over a year. They are published in the 1925 proceedings of the North Dakota Bar at page 192, and in the American Bar Association at page 118. I will read them to you:

Judicial Ethics

In addition to the Canons for Professional Conduct of Lawyers, which it has formulated and adopted, the Bar Association

of North Dakota, mindful that the character and conduct of a judge should never be objects of indifference and that declared ethical standards tend to become habits of life, deems it desirable to set forth its views respecting those principles which should govern the personal practice of members of the judiciary in the administration of their office. The association accordingly adopts the following canons, the spirit of which it suggests as a proper guide and reminder for judges, and as indicating what the people have a right to expect from them.

1. Relations of the Judiciary.—The assumption of the office of judge casts upon the incumbent duties in respect to his personal conduct which concern his relation to the state and its inhabitants, the litigants before him, the principles of law, the practitioners of law in his court, and the witnesses, jurors and attendants who aid him in the administration of its functions.

2. The Public Interest.—Courts exist to promote justice and thus to serve the public interest. Their administration should be speedy and careful. Every judge should at all times be alert in his ruling and in the conduct of the business of the court, so far as he can, to make it useful to litigants and to the community. He should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for litigants.

3. Constitutional Obligations.—It is the duty of all judges in the United States to support the federal constitution and that of the state whose laws they administer; in so doing, they should fearlessly observe and apply fundamental limitations and guaranties.

4. Avoidance of Impropriety.—A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his every-day life, should be beyond reproach.

5. Essential Conduct.—He should be temperate, attentive, patient, impartial, and, since he is to administer the law and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts.

6. Industry.—He should exhibit an industry and application commensurate with the duties imposed upon him.

7. Promptness.—He should be prompt in the performance of his judicial duties, recognizing that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality on

this part justifies dissatisfaction with the administration of the business of the court.

8. Court Organization.—He should organize the court with a view to the prompt and convenient dispatch of its business and he should not tolerate abuses and neglect by clerks, and other assistants who are sometimes prone to presume too much upon his good-natured acquiescence by friendly association with him.

It is desirable, too, where the judicial system permits, that he should co-operate with the other judges of the same court, and in other courts, as members of a single judicial system, to promote the more satisfactory administration of justice.

9. Consideration for Jurors and Others.—He should be considerate of jurors, witnesses and other in attendance upon the court.

10. Courtesy and Civility.—The attitude of a judge toward counsel interested in litigation pending before him should be that of habitual and uniform courtesy and civility. He should in his treatment of counsel avoid even the appearance of impatience, arrogance or dogmatic adherence to one side or the other of the controversy. He should not attempt to regulate the attitude or language of counsel except when it is clearly apparent that willful disrespect to the court is intended.

He should also require, and, so far as his power extends, enforce on the part of clerks, court officers and counsel, civility and courtesy to the court, and to jurors, witnesses, litigants and others having business in the court.

11. Unprofessional Conduct of Attorneys and Counsel.—He should utilize his opportunities to criticize and correct unprofessional conduct of attorneys and counsellors, brought to his attention, and, if adverse comment is not a sufficient corrective, should send the matter at once to the proper investigating and disciplinary authorities.

12. Appointees of the Judiciary and Their Compensation.—Trustees, receivers, masters, referees, guardians, and other persons appointed by a judge to aid in the administration of justice should have the strictest probity and impartiality and should be selected with a view solely to their character and fitness. The power of making such appointments should not be exercised by him for personal or partisan advantage. He should not permit his appointments to be controlled by others than himself. He should also avoid nepotism and undue favoritism in his appointments.

While not hesitating to fix or approve just amounts, he should be most scrupulous in granting or approving compensation for the

services or charges of such appointees to avoid excessive allowances, whether or not excepted to or complained of. He cannot rid himself of this responsibility by the consent of counsel.

13. Kinship or Influence.—He should not act in a controversy in the result of which he has even a nominal pecuniary interest; or one in which he has formed an opinion upon a controverted issue of fact or law; or one in which he entertains a feeling of personal bias or prejudice toward either of the parties.

He should not act in a controversy where a near relative is a party, and, if such a course can reasonably be avoided, he should not sit in litigation where a near relative appears before him as a counsel; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position, or influence of any party or other person.

14. Independence.—He should not be swayed by partisan demands, public clamor or considerations of personal popularity or notoriety, nor be apprehensive of unjust criticism.

15. Interference in Conduct of Trial.—He may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity, but he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial may tend to prevent the proper presentation of the case, or the ascertainment of the truth in respect thereto.

Conversation between the judge and counsel in Court is often necessary, but the judge should be studious to avoid controversies which are apt to obscure the merits of the dispute between litigants and lead to its unjust disposition. In addressing counsel, litigants, or witnesses he should avoid a controversial manner or tone.

He should avoid interruptions of counsel in their arguments except to clarify his mind as to their positions, and he should not be tempted to the unnecessary display of learning or a premature judgment.

16. Ex Parte Applications.—He should discourage ex parte hearings of applications for injunctions and receiverships where the order may work detriment to absent parties; he should act upon such ex parte applications only where the necessity for quick action is clearly shown; if this be demonstrated, then he should endeavor to counteract the effect of the absence of opposing counsel by a scrupulous cross-examination and investigations

as to the facts and the principles of law on which the application is based, granting relief only when fully satisfied that the law permits it and the emergency demands it. He should remember that an injunction is a limitation upon the freedom of action of the defendants and should not be granted lightly or inadvisedly. One applying for such relief must sustain the burden of showing clearly its necessity and this burden is increased in the absence of the party whose freedom of action is sought to be restrained even though only temporarily.

17. *Ex Parte Communications.*—He should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to be affected thereby are not represented before him, except in cases where provision is made by law for *ex parte* application.

While the condition under which briefs of argument are to be received are largely matters of local rule or practice, he should not permit the contents of such briefs presented to him to be concealed from opposing counsel. Ordinarily all communications of counsel to the judge intended or calculated to influence action should be made known to opposing counsel.

18. *Continuances.*—Delay in the administration of justice is a common cause of complaint; counsel are frequently responsible for this delay. A judge, without being arbitrary or forcing cases unreasonably or unjustly to trial when unprepared, to the detriment of parties, may well endeavor to hold counsel to a proper appreciation of their duties to the public interest to their own clients, and to the adverse party and his counsel, so as to enforce due diligence in the dispatch of business before the court.

19. *Judicial Opinions.*—In disposing of controverted cases, a judge should indicate the reasons for his action in an opinion showing that he has not disregarded or overlooked serious arguments of counsel. He thus shows his full understanding of the case, avoids the suspicion of arbitrary conclusion, promotes confidence in his intellectual integrity and may contribute useful precedent to the growth of the law.

It is desirable that courts of appeal in reversing cases and granting new trials should so indicate their views on questions of law argued before them and necessarily arising in the controversy that upon the new trial counsel may be aided to avoid the repetition of erroneous positions of law and shall not be left in doubt by the failure of the court to decide such questions.

But the volume of reported decisions is such and is so rapidly increasing, that in writing opinions which are to be published, judges may well take this fact into consideration, and curtail

them accordingly, without substantially departing from the principles stated above.

It is of high importance that judges constituting a court of last resort should use effort and self-restraint to promote solidarity of conclusions and the consequent influence of judicial decisions. A judge should not yield to pride of opinion or value more highly his individual reputation than that of the court to which he should be loyal. Except in case of conscientious difference of opinion on fundamental principle, dissenting opinions should be discouraged in courts of last resort.

20. Influence of Decisions Upon the Development of the Law.—A judge should be mindful that his duty is the application of general law in particular instances, that ours is a government of law and not of man, and that he violates his duty as a minister of justice under such a system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become a precedent unsettling accepted principles and may have detrimental consequences beyond the immediate controversy. He should administer his office with a due regard to the integrity of the system of the law itself, remembering that he is not a depositary of arbitrary power, but a judge under the sanction of the law.

21. Idiosyncrasies and Inconsistencies.—Justice should not be moulded by the individual idiosyncrasies of those who administer it. A judge should adopt the usual and expected method of doing justice, and not seek to be extreme or peculiar in his judgments, or spectacular or sensational in the conduct of the court. Though vested with discretion in the imposition of mild or severe sentences, he should not compel persons brought before him to submit to some humiliating act or discipline of his own devising, without authority of law, because he thinks it will have a beneficial corrective influence.

In imposing sentence he should endeavor to conform to a reasonable standard of punishment and should not seek popularity or publicity either by exceptional severity or undue leniency.

22. Review.—In order that a litigant may secure the full benefit of the right of review accorded to him by law, a trial judge should scrupulously grant to the defeated party opportunity to present the questions arising upon the trial exactly as they arose, where presented, and decided, by full and fair bill of exceptions or otherwise; any failure in this regard on the part of the judge is peculiarly worthy of condemnation because the wrong done may be irremediable.

23. **Legislation.**—A judge has exceptional opportunity to observe the operation of statutes, especially those relating to practice, and to ascertain whether they tend to impede the just disposition of controversies; and he may well contribute to the public interest by advising those having authority to remedy defects of procedure, of the result of his observation and experience.

24. **Inconsistent Obligations.**—He should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.

25. **Business Promotions and Solicitations for Charity.**—He should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify suspicion, nor use the power of his office or the influence of his name to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relation which, in the normal course of events reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties.

26. **Personal Investments and Relations.**—He should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the bench, he should not retain such investments previously made longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information, coming to him in a judicial capacity, for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazards of a margin.

27. **Executorships and Trusteeships.**—While a judge is not disqualified from holding executorships or trusteeships, he should not accept or continue to hold any fiduciary or other position if the holding of it would interfere or seem to interfere with the proper performance of his judicial duties, or if the business interests of those represented require investments in enterprises

that are apt to come before him judicially, or to be involved in questions of law to be determined by him.

28. **Partisan Politics.**—While entitled to entertain his personal views of political questions, and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments or contributions to party funds, the public endorsement of candidates for political office and participation in party conventions.

29. **Self-Interest.**—He should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court of which he is a judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

30. **Candidacy for Office.**—A candidate for judicial position should not make or suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing power; he should not announce in advance his conclusions of law on disputed issues to secure class support and he should do nothing while a candidate to create the impression, that if chosen, he will administer his office with bias, partiality, or improper discrimination.

While holding judicial office he should decline nomination to any other place which might reasonably tend to create a suspicion or criticism that the proper performance of his judicial duties is prejudiced or prevented thereby.

If a judge becomes a candidate for any office, he should refrain from all conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his candidacy or the success of his party.

He should not permit others to do anything in behalf of his candidacy which would reasonably lead to such suspicion.

31. **Private Law Practice.**—In many states the practice of law by one holding judicial position is forbidden. In superior courts of general jurisdiction, it should never be permitted. In inferior courts in some states, it is permitted because the county or municipality is not able to pay adequate living compensation for a competent judge. In such cases one who practices law is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success.

He should not practice in the court in which he is a judge, even when presided over by another judge, or appear therein for himself in any controversy.

If forbidden to practice law, he should refrain from accepting any professional employment while in office.

He may properly act as arbitrator or lecture upon or instruct in law, or write upon the subject, and accept compensation therefor, if such course does not interfere with the due performance of his judicial duties, and is not forbidden by some positive provision of the law.

32. Gifts and Favors.—He should not accept any presents or favors from litigants, or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment.

33. Social Relations.—It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meetings of members of the bar. He should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships, constitute an element in influencing his judicial conduct.

34. A Summary of Judicial Obligation.—In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private, political, or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

This committee desires to submit these Canons of Judicial Ethics as their report and tomorrow we will bring them before the association for their adoption. You will notice on the program that your consideration of this report is already made a special order for 10:45 tomorrow morning.

PRESIDENT YOUNG: We will now have the report of the committee on legal education and admission to the bar. Is Mr. Manley in the room? We are behind with our reports. We will

hear the committee on the revision of the probate code, Judge Bagley.

REVISION OF THE PROBATE CODE

JUDGE BAGLEY: Your committee on revision of the probate code begs leave to report as follows:

This committee was continued at the last annual meeting for the purpose of considering the advisability of submitting to the association a set of simplified probate forms.

After considerable correspondence between the members of the committee and with other lawyers interested in the matter, it has not been found possible for the committee to decide either upon the necessity of a new set of forms or the proper method of submitting the same to the lawyers of the state if agreed upon.

Many lawyers seem to feel that the forms now in use are fairly adequate and that any change at this time would lead to unnecessary expense and confusion. Several members of the committee also feel that the interests of the publishing houses should be considered. The publishing houses all express a readiness to make any changes in the forms determined by the committee to be essential, but point out that the 1925 amendments to the probate code made many changes necessary at considerable expense to them. The publishing houses have now large stocks of blanks on hand and are, naturally, very loath to have anything done which will render such stocks useless. As conservators of vested interests, most lawyers naturally sympathize more or less with the publishers.

Even if a model set of blanks should be prepared, however, the committee has been unable to agree upon any method of submitting the same to the lawyers. To attempt to submit a model set of blanks to each lawyer would be a task beyond the ability of the committee to undertake. But unless this were done, it is hard to see how such a model set would be of any real use. If merely read to the lawyers present at this meeting, the reading would only be another tiresome bore to the sufferers here present.

A number of the committee suggest that a model set of blanks be submitted in the form of a bill to the next legislature. It is possible that this might be advisable. But the matter is not one properly for legislation. We have already too many laws regulating practice. And experience shows that the forms already made statutory, such as Letters Testamentary and Warranty Deeds, are never used.

On the whole, it is the sense of a majority of the committee

that no set of new probate forms be submitted at this time. It is further suggested by several members of the committee that lawyers meet the situation by dictating their own forms as far as possible, omitting the names of petitioners and respondents from the title, except in the case of citations, and further simplifying by omitting all unnecessary verbiage and by stating jurisdictional facts as briefly as possible.

In cases where forms are dictated, an experienced county judge suggests that copies be made for the use of the court as a record by pasting them directly in the proper recordbook. County judges as a rule are, as we know, adverse to the use of any but the printed forms because of the time required to copy dictated forms.

If lawyers, as a rule, adopt the practice of preparing their own simplified forms, the resultant loss of business to the blank publishing concerns will perhaps overcome their reluctance to change and they themselves will meet the situation by supplying us with new blank forms, so simple and so easily understood that it will be easier in the future than it has been in the past for our stenographers to do our probate work for us.

Respectfully,

HORACE BAGLEY,
Chairman.

PRESIDENT YOUNG: What will you do with the report?

MR. BURNETT: I move its adoption.

MR. ELLSWORTH: I was thinking that if you are going to consider the report presented by Mr. Lovell, it will be necessary to have some of them printed. There are only one-half dozen copies here. It will be impossible to remember from the reading of them.

PRESIDENT YOUNG: No copies available. Copies of the proceedings are exhausted. It would be necessary to have them reprinted, if you insist. As there is no motion on the matter, we will pass on.

I might say that the committee on codes and laws, of which Judge Johnson was chairman, states that there was nothing for the committee to report formally because the work was completed. The revised laws have been printed and distributed.

JUDGE ELLSWORTH: I move that the committee be discharged. The motion was seconded.

MR. CUPLER: I think it would be inadvisable to dismiss that committee without this association giving a vote of thanks to Judge Johnson and the committee. I know the amount of labor

that was required to get it out. I would amend the motion by adding a vote of thanks.

PRESIDENT: Would you accept that amendment?

JUDGE ELLSWORTH: I cannot, as I am a member of the committee.

MR. ADAMS: I object to that motion. I think we should have a committee working to that end.

PRESIDENT YOUNG: The question is on the adoption of the motion made by Judge Ellsworth that the committee be discharged.

MR. CUPLER: Was my amendment accepted by Mr. Ellsworth?

PRESIDENT YOUNG: No.

MR. CUPLER: Then as a substitute motion, I move that the report of the committee be adopted.

Seconded by MR. NOSTDAL: Carried.

PRESIDENT YOUNG: The motion is carried and the committee is discharged. We will now have the report of the committee on the revision of federal practice.

REPORT OF COMMITTEE ON REVISION OF FEDERAL PRACTICE

In the months of January and February, 1926, your committee, through the kind assistance and co-operation of Representative Burntress, secured copies of legislation pending in congress affecting federal practice and procedure. At that time, your committee examined the bills pending and made a report, copy of which report is hereto attached.

The declaratory judgment bill, H. R. 5365, was favorably reported by the judiciary committee of the house on April 19th and passed the house on May 17th. It is now pending before the judiciary committee of the senate with good prospect of passage before the close of the present congress on March 4th, next.

The bill H. R. 564, commonly called the stenographer's bill, has been favorably reported by the house committee, but has not as yet been considered on the floor.

Bill H. R. 120, being a bill introduced by Mr. Burntress to change the fees of jurors and witnesses in the federal courts, has been enacted into a law. It is now under Public No. 148—69th congress and a copy is hereto attached. This legislation was much needed as jurors and witnesses in the federal courts did not get enough pay to even take care of their actual expenses.

H. R. 7907. The senate recently passed this bill providing for increases in federal judges' salaries as follows:

Circuit judges	\$15,000.00
District judges	12,000.00
Chief justice of court of claims	15,500.00
Other judges of court of claims	15,000.00
Chief Justice of Court of Appeals of the District of Columbia	15,500.00
Associate justices, court of appeals of District of Columbia	15,000.00
Chief justice of supreme court of the District of Columbia	13,000.00
Associate justices	12,500.00
Presiding judge of court of customs appeals	15,500.00
Associate justices of court of customs appeals	15,000.00
Members of the board of general appraisers of the United States	12,500.00

A similar bill has been before the house for some time. Our information is that the bill as passed by the senate in all probability will not be approved by the house. The judiciary committee of the house has reported for passage a new bill which provides for a salary as follows:

Circuit judges	\$12,500.00
District judges	10,000.00
Chief justice of court of claims	12,500.00
Other judges of court of claims	12,500.00
Chief justice of court of appeals of the District of Columbia	12,500.00
Associate justices, court of appeals of District of Columbia	12,500.00
Chief justice of supreme court of the district of Columbia	10,500.00
Associate justices	10,000.00
Presiding judge of court of customs appeals	12,500.00
Associate justices of court of customs appeals	12,500.00
Members of the board of general appraisers of the United States	10,000.00

This salary bill has been set down for consideration by the house when it reconvenes in December of this year. As before stated, our information is that the report of the judiciary committee of the house reducing the salaries proposed in the original bill, will probably be adopted.

The committee wholly approves and endorses H. R. 419, relative to the giving of the United States supreme court power to

prescribe general rules for practise and procedure in action at law. The committee feels this to be very desirable legislation and urges its senators and congressmen to give it their full support.

The committee's objection to H. R. 7613, introduced by Mr. Newton of Minnesota, is that it makes clerical work for the judge of the district court. We feel that the judge should be relieved of this sort of work and some other method should be found to meet the situation, which is aimed at by the author of the bill.

The committee wholly approves H. R. 121, introduced by Mr. Burtness. We feel that this legislation, which apparently is patterned after our state law, is desirable and would be of considerable value to litigants in the United States court.

As to H. R. 479, introduced by Mr. La Guardia, the committee feels it would be a mistake to exclude from presiding a judge connected in any way with the contempt proceedings. We are inclined to believe that the judge against whom the contempt was committed, would be better able to pass upon the situation and, in practically all cases, would be more apt to do exact justice. We think the person charged with the contempt would fare much better before the judge against whom the contempt was committed, than before another judge.

The declaratory judgment bill, H. R. 5365, introduced by Mr. Graham, seems desirable litigation. We understand it is sponsored by the National Bar association.

H. R. 5564, introduced by Mr. Boies, is not desirable legislation insofar as the United States court in this state is concerned. The state court reporter in this state gets \$2,100. Under this bill, a reporter could not serve as secretary to district judge in addition to holding the job as reporter. This situation would mean that the judge of the United States court here probably could not get a competent reporter to serve because of the meagre salary. If the bill provided a minimum salary of \$3,000, or contained a provision that in the discretion of the judge, one person could be both secretary and reporter, and receive salaries for both jobs, the situation would not be so objectionable.

The committee feels that the federal judges should have an increase of their salary. It is well known that the salary now allowed, does not make the job very attractive to the successful lawyer. Because of having to take a great many trips to attend to his work, Judge Miller is put to a good deal of expense which has to come out of his own pocket. This situation does not seem right to the members of the bar. The committee feels that the

district judges' salary should be increased to, at least, \$12,500 a year.

E. T. CONMY,
Chairman of committee.

PRESIDENT YOUNG: You have heard the report. Will one of you move its adoption?

The motion was made, seconded and carried.

PRESIDENT YOUNG: Will the vice-president please take the chair.

MR. MCINTYRE: From the looks of the people in the back of the room, I see most of those present are accustomed to attend church. There will be no collection taken so come down here for the benefit of the speaker as well as yourselves. The doors will not be closed and you can get out at the end of the meeting.

It is my pleasure, gentlemen, as vice-president, to present to you our president, who will favor you with his annual address.

MR. YOUNG: Gentlemen of the Bar Association of North Dakota: There are subjects other than the one I have chosen which are more enticing to me as a fit subject for the annual address, but one cannot read the stream of editorials that we all receive from day to day, and then attend a meeting such as that I recently attended at Denver, the meeting of the American Bar Association, in which the atmosphere was laden with thought of reform and improvement of existing conditions, without feeling impelled, whatever his personal views might be, to discuss one phase in the improvement of the administration of justice. So I have chosen for my subject, A More Efficient Administration of Justice.



C. L. YOUNG
President 1925-1926

